

Berry, Wayne 5/18/2005

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF HAWAII

3
4 WAYNE BERRY, a Hawaii) CIVIL NO. CV03-00385 SOM LEK
5 citizen;) (Copyright)
6)
7 Plaintiff,)
8)
9)
10 vs.)
11) Volume 1
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13 DEPOSITION OF WAYNE BERRY,
14 taken on behalf of the Defendant, Post-Confirmation
15 Trust, at the Law Offices of Kobayashi, Sugita & Goda,
16 999 Bishop Street, Suite 2600, Honolulu, Hawaii,
17 96813, commencing at 8:59 a.m., on Wednesday, May 18,
18 2005, pursuant to Notice.

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20
21 BEFORE: Julie A. Peterson, CSR #361, CRR, RMR
22 Registered Professional Reporter
23 Notary Public, State of Hawaii

24 Ali'i Court Reporting
25 2355 Ala Wai Blvd., Suite 306
Honolulu, Hawaii 96815
(808) 926-1719

EXHIBIT "A"

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1 APPEARANCES:

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4 For the Plaintiff: TIMOTHY J. HOGAN, ESQ.

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8 For the Defendant Post-Confirmation Trust:

9 LEX R. SMITH, ESQ.

10 ANNE E. LOPEZ, ESQ.

11 Kobayashi, Sugita & Goda

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15

and

16

17 ERIC C. LIEBELER, ESQ.

18 DAMIAN D. CAPOZZOLA, ESQ.

19 Kirkland & Ellis LLP

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21 Los Angeles, California 90017

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25 For the Defendants Mark Dillon, Teresa Noa and Brian

Christensen, et al:

LYLE S. HOSODA, ESQ.

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1 A What do you call it? Like a post office box.

2 Q Is your father named Paul Berry?

3 A Yes.

4 Q Did Paul Berry ever file a suit against you,
5 sir?

6 A I believe he did, yes.

7 Q Did you ever appear to defend yourself in that
8 action?

9 MR. HOGAN: Objection, calls for legal
10 conclusion. Also vague as to the term "appear,"
11 whether or not it means he physically appeared in the
12 courtroom or whether he filed an appearance.

13 A I'm not too sure how to answer that with the
14 legal -- I don't know what the legal -- I'm not trying
15 to evade your question, but the legal term "appear"
16 technically means.

17 Q (By Mr. Liebeler): Do you know where that
18 litigation was brought, sir, what state it was filed
19 in?

20 A California.

21 Q Did you ever physically travel to the
22 California courthouse and go to that courthouse for
23 purposes of that litigation?

24 A No.

25 Q Did you ever retain a lawyer to defend you in

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1 that litigation?

2 A I'm hesitating because I don't know how to
3 answer the defense of it. If I ever -- Originally,
4 no. Later, yes.

5 Q Did you ever retain counsel to represent you in
6 California for purposes of that litigation?

7 A Yes.

8 Q Who was that lawyer?

9 A I don't recall the name.

10 Q Do you know, yes or no, whether or not that
11 lawyer ever appeared on your behalf in California
12 court for purposes of that litigation?

13 A It's my understanding he did. I wasn't there.

14 Q Are you aware that a default judgment was
15 entered against you in that litigation?

16 A I think there was a default judgment entered
17 against me in litigation where I had not retained an
18 attorney to appear for me at that time.

19 Q Did your father sue you more than once?

20 A Not that I'm aware of.

21 Q Has that judgment, to your understanding, ever
22 been satisfied?

23 A I don't know.

24 Q You're aware that there's a judgment currently
25 against you, sir?

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1 A Last time I looked several years ago, yes.

2 Q What is it that you have done, if anything, to
3 satisfy that judgment?

4 MR. HOGAN: I'm going to object on the grounds
5 of relevance.

6 A What do you mean by "satisfy"?

7 Q (By Mr. Liebeler): Pay.

8 A I think at one point years ago there were some
9 offers made and they weren't accepted, but nothing
10 more than that.

11 Q Has any material amount of that judgment
12 actually been paid by you, sir?

13 A Not that I'm aware of.

14 Q Let's go ahead and mark an exhibit as 46.

15 (Whereupon, Berry Deposition Exhibit 46
16 marked for identification, 5-18-05.)

17 MR. HOGAN: Just for the record, we agreed to
18 go beyond seven-hour limit based on the fact that
19 representation be relevant questioning to this depo.
20 That is apparently not so, so we will hold you to the
21 seven hours.

22 Q (By Mr. Liebeler): Have you ever seen 46
23 before, Mr. Berry?

24 MR. HOGAN: Object to the foundation for the
25 document. It's not a certified copy of the judgment.

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1 The witness can answer the question if he can.

2 MR. LIEBELER: Just so we're clear, I'm not
3 purporting to serve him with it.

4 MR. HOGAN: I'm just objecting on the grounds
5 of foundation, Counsel.

6 MR. LIEBELER: I'm asking whether he's seen the
7 document, yes or no. There's no proper foundation
8 objection to that question.

9 MR. HOGAN: Again, I've just made an objection,
10 Counsel. Do I get to do that?

11 MR. LIEBELER: Fair point, Mr. Hogan.

12 A It looks to me like a collection of documents.
13 I don't remember seeing any of them.

14 Q (By Mr. Liebeler): Your recollection, then,
15 sir, is that you have seen none of the documents that
16 have been collected together as Exhibit 46; am I
17 right?

18 A I don't recall them, that's correct.

19 Q Looking at the sixth page of 46, which is the
20 second page of the Garnishee Order, you see where it
21 indicates that you owe approximately \$273,494?

22 MR. HOGAN: Objection, document speaks for
23 itself.

24 A Yes.

25 Q (By Mr. Liebeler): Is that consistent with

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1 your understanding of the amount of the judgment that
2 was entered against you in California?

3 A I don't know what the amount is that was
4 entered as a judgment in California.

5 Q Is the number that I articulated to you
6 consistent with your knowledge of that judgment?

7 A I'm not sure.

8 Q You have no basis to judge whether the 273,000
9 odd number is consistent or inconsistent with the
10 judgment entered against you in California, sir?

11 MR. HOGAN: Objection, compound.

12 A Can you rephrase that?

13 Q (By Mr. Liebeler): Do you have any basis to
14 tell me that that \$273,000 odd number is in any way
15 incorrect?

16 A No.

17 Q No, you have no such basis, correct?

18 A I have no basis.

19 Q Do you, as we sit here today, sir, have the
20 ability to satisfy that judgment?

21 MR. HOGAN: Objection, relevance.

22 A What do you mean by "satisfy"?

23 Q (By Mr. Liebeler): Pay it.

24 MR. HOGAN: Vague as to the term "sit here
25 today."

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1 A I can't reach into my pocket and pull that kind
2 of money out right now, no.

3 Q (By Mr. Liebeler): Do you have that amount of
4 money available to you to pay that judgment if
5 necessary?

6 MR. HOGAN: Objection as to the term "available
7 to you."

8 A I'm not too sure what that means, available to
9 me.

10 Q (By Mr. Liebeler): Well, do you have
11 sufficient assets that you could sell to pay that
12 judgment? Do you have sufficient borrowing capacity
13 to pay that judgment? Could you satisfy that
14 judgment, sir?

15 MR. HOGAN: Objection, calls for speculation.

16 A I don't know. I'd have to -- Do you want me to
17 guess?

18 Q (By Mr. Liebeler): I want you to give me your
19 best testimony, sir.

20 A I don't know.

21 Q Do you have a checking account?

22 A Not right now, no.

23 Q Do you have a savings account?

24 A No.

25 Q Do you have any money in your wallet?

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1 MR. HOGAN: I'm going to object, and I don't
2 have any idea where this is going. It is obviously an
3 attempt to attack the plaintiff. No relevance
4 whatsoever regarding a matter in which Mr. Smith has
5 been actively engaged and has conflicted your firm as
6 well as his firm presently from representing the PCT.
7 I'll state that for the record. I'll ask to have a
8 copy of the transcript provided to the Office of the
9 United States Trustee in Delaware to make it clear
10 that you are conflicted.

11 Q (By Mr. Liebeler): Go ahead.

12 A I don't have a wallet.

13 Q Do you have any money in your personal
14 possession right now, sir?

15 A Yes.

16 Q How much?

17 MR. HOGAN: I object to this question.

18 A A couple hundred dollars.

19 Q (By Mr. Liebeler): Do you own any real estate
20 assets?

21 A No.

22 Q Do you own any liquid stocks or bonds or
23 securities of any type?

24 A "Liquid" meaning?

25 Q Readily marketable.

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1 A No.

2 Q Do you hold any illiquid securities of any
3 type?

4 MR. HOGAN: I would like to request we take a
5 break and contact the Discovery Master, have this
6 transcript read to the Discovery Master, and ask him
7 to rule on whether or not this is out of bounds in
8 regard to this deposition.

9 MR. LIEBELER: There's a question pending, sir.

10 MR. HOGAN: The witness can answer the
11 question.

12 A Not that I can think of right now.

13 MR. HOGAN: I've asked to have a ruling made by
14 the Discovery Master. His appointment is consistent
15 with his obligation to make such rulings. Are you
16 going to permit me to ask for that ruling, sir?

17 MR. LIEBELER: I think I have one more question
18 on this document and then we're done with it for the
19 day. So if you want to do that for one question about
20 the address of the witness that appears on another
21 document, you can, but I don't think it a productive
22 use of our time.

23 MR. HOGAN: Go ahead, ask the question.

24 MR. LIEBELER: Let's have marked as Exhibit 47
25 that one.

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(Whereupon, Berry Deposition Exhibit 47

marked for identification, 5-18-05.)

MR. HOGAN: I'll make an objection, foundation.

The document is not a certified document. The witness
can answer questions.

Q (By Mr. Liebeler): Have you ever seen a copy
of that document before, Mr. Berry?

A No, not that I can recall.

Q On the face of the document it indicates that
at one point you had an address at 59-379 Alapio Road
in Haleiwa. Was that at one point your address?

A Yes.

Q When, sir?

A I'm trying to place the year. It seems like
June 2001.

Q That was when it was last your address, sir?

A I think so.

MR. LIEBELER: Mr. Hogan, I have one more
question on this document and I understand that you
may want to go to the Discovery Master. Let me tell
you what my question is and I think you'll probably
let me ask it, although I don't want to presume.

I just want to ask the witness whether or
not the examination that is articulated by this
document ever took place.

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1 MR. HOGAN: Go ahead and ask the question.

2 Q (By Mr. Liebeler): Mr. Berry, this document
3 indicates that it's an order for an examination of you
4 as a judgment debtor. Did that examination ever take
5 place, sir?

6 A Not that I recall.

7 Q You indicated to us at the last deposition,
8 Mr. Berry, that API was a company in which you were
9 some way associated or affiliated, and I don't want to
10 butcher the term, but you know about a company called
11 API, right?

12 A You mean Atlantic Pacific International, is
13 that -- using API as an acronym for that?

14 Q That's correct.

15 A Yes.

16 Q And you typically have used API as an acronym
17 for Atlantic Pacific International, correct?

18 A Yes. I just wanted to make sure we were
19 talking about the same thing.

20 Q Correct, and we are.

21 Is API still seeking to collect its
22 receivables?

23 A I'm not sure. You mean out to collect from --
24 Filed a claim in the bankruptcy.

25 Q Well, that was going to be my next question.

STATE OF HAWAII)
) ss.
CITY AND COUNTY OF HONOLULU)

I, Julie A. Peterson, Notary Public, State of Hawaii, do hereby certify:

That on May 18, 2005, commencing at 8:59 a.m., appeared before me Wayne Berry, the witness whose deposition is contained herein; that prior to being examined he was by me duly sworn; that the deposition was taken in machine shorthand by me and thereafter reduced to typewriting under my supervision; that the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter.

That the deponent was notified through counsel, by mail or by telephone, to appear and sign; that if the transcript is filed without signature, deponent has failed to appear and the transcript is therefore kept on file without signature pursuant to Court rules.

I further certify that I am not attorney for any of the parties hereto, nor in any way interested in the outcome of the cause named in the caption.

Dated at Honolulu, Hawaii, this 22nd day of May, 2005.

My Commission Expires: 9/1/2006

